

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

MEMORANDUM AND ORDER

Case No. 98-CR-500-FB

RASENE MYTON,

Defendant.

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Appearances:

For the United States:

DREW G. ROLLE
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Brooklyn, New York 11201

For the Defendant:

MICHAEL K. SCHNEIDER
Federal Defenders of New York
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BLOCK, Senior District Judge:

Rasene Myton is currently serving a sentence of forty years' imprisonment for Hobbs Act robbery conspiracy, attempted Hobbs Act robbery, and completed Hobbs Act robbery, all in violation of 18 U.S.C. § 1951. He is also serving consecutive five-, twenty-, and twenty-five-year sentences for using a firearm in connection with those crimes, in violation of 18 U.S.C. § 924(c).

Myton's convictions and sentence were affirmed on direct appeal, *see United States v. Bernard*, 224 F. App'x 125 (2d Cir. 2007), and he unsuccessfully sought post-conviction relief under 28 U.S.C. § 2255. However, the Second Circuit granted him permission to file a successive § 2255 motion raising the claim

that his Hobbs Act convictions do not supply valid predicates for his § 924 convictions under *Johnson v. United States*, 576 U.S. 591 (2015), and *United States v. Davis*, 138 S. Ct. 2319 (2019).

Myton's successive § 2255 motion raises the same issues the Court recently addressed in *United States v. Bernard*, 2023 WL 184443 (E.D.N.Y. Jan. 13, 2023). For the reasons stated in that memorandum and order, the Court concludes (1) that attempted Hobbs Act robbery is not a "crime of violence," (2) that completed Hobbs Act robbery is a crime of violence, and (3) that the Court should exercise its discretion to resentence Myton de novo.

Accordingly, Myton's § 924 convictions predicated on attempted Hobbs Act robbery (i.e., Count Three of the S-4 Indictment and Count Five of the S-6 Indictment) are vacated, along with the sentences accompanying those convictions. The judgment of conviction and sentence remains unchanged in all other respects. The Probation Department is directed to prepare an updated Presentence Report, upon completion of which the matter will be scheduled for a de novo resentencing.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
June 1, 2023